

DECISION  
TALBOT COUNTY BOARD OF APPEALS  
Appeal No. 16-1651

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:00 p.m., August 29, 2016, on the application of the **MARTINGHAM UTILITIES COOPERATIVE** ("Applicant"). The Applicant is requesting a variance of the required 25-foot rear yard setback to 12 feet to replace and relocate an existing 75,000 gallon water storage tank. The property is located on 24490 Deep Water Point Drive, St. Michaels, Maryland 21663 in the Rural Conservation and Western Rural Conservation (RC/WRC) zone. It is owned by the Applicant. The request is made in accordance with Chapter 190 Zoning, Article II, §190-14 B, Table II-3 and Article IX, §190-182 of the Talbot County Code ("Code").

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, Margaret Young, Louis Dorsey, Jr. and Greg Gannon. James Blankner and Eugene Holler appeared on behalf of the Martingham Utilities Cooperative. Jeremy Rothwell, Planner I, Talbot County Office of Planning and Zoning, attended the hearing on behalf of the County. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that each of the members of the Board had visited the site individually.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for variance.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Appeals Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the *Star-Democrat*.
5. Notice of hearing with a list of nearby property owners attached.
6. Copy of variance requirements from the Code with the Applicant's response to each applicable requirement.

7. Staff Report dated August 10, 2016, with attachments.
8. Sign maintenance agreement.
9. Site Plan by Davis Bowen & Friedel, Inc.
10. Independent Disclosure and Acknowledgement Form.
11. Aerial photograph.
12. Deed.
13. Letter from Albert Lemieux received July 18, 2016.
14. Critical Area Computation Worksheet.
15. Photograph of the exterior color of the tank.
16. Photograph of the existing 75,000 gallon tank.
17. Board of Appeals Decision No. 1471.

Mr. Blankner testified that the existing 75,000 gallon water storage tank is deteriorating and needs to be replaced. The proposed replacement tank utilizes better technology to reduce corrosion than was available when the existing tank was purchased and installed. The Applicant proposes to place the new tank on a different location on the same parcel. The new tank will encroach on the rear yard setback of that parcel. The neighboring property owner next to the rear yard encroachment does not oppose the application.

The Applicant is proposing to relocate the tank so that the existing tank may continue to supply the water needs of the homes in the community while the replacement tank is installed and connected. To replace the aging tank at the same location, the Applicant would have to rent emergency tanker trucks to supply those needs while the original tank was decommissioned and removed and the replacement tank installed and commissioned.

Mr. Holler said that the current tank was installed on the property in about 1972.

In response to a question from the Board Mr. Blankner said that the Martingham golf course does not use water from the storage tank for irrigation. Instead, the golf course uses untreated water from different wells.

Mr. Rothwell confirmed that the golf course uses a series of shallower wells for its irrigation needs. That water comes from an aquifer that is different from the aquifer used by the Applicant to provide potable water for Martingham residents.

Mr. Blankner said that they will have to remove one tree. It will be replaced by several other trees. The new tank will be screened by trees, other vegetation and the existing maintenance building.

No one appeared in opposition to the application.

There being no further evidence the Board considered the application.

After some discussion and upon motion duly made and seconded, the Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Certain unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that a literal enforcement of the provisions of the Code would result in practical difficulty or unreasonable hardship in enabling the Applicant to develop the property. The parcel is a small, irregular shaped parcel created by the subdivision of the Martingham development in 1971. Except for the location of the existing tank there is no other area on the parcel that can accommodate the new tank.
3. The granting of the variance is not based upon circumstances which are self-created or self-imposed. The parcel for the water storage tank was subdivided in 1971 and the existing tank was installed in 1972, both prior to the current setback standards. The existing tank must be replaced.

4. Greater profitability or lack of knowledge of the restrictions was not considered as sufficient cause for the variance. The Applicant is a non-profit utility cooperative created to provide water and wastewater service to the residents of the Martingham subdivision.
5. The granting of the variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The replacement tank will enable the Applicant to provide a continuous supply of clean, potable water to the residents of Martingham. The parcel is screened on three sides by existing mature trees and other vegetation and only partially visible from a public street.
6. The variance does not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. The replacement tank will be the same size as the existing tank on the parcel. Its proposed location will enable the Applicant to replace the deteriorating tank with a new, more up-to-date tank without interrupting water service to the Martingham residents.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED that the Applicant, **MARTINGHAM UTILITIES COOPERATIVE** (Appeal No. 16-1651) is **GRANTED** the requested variance consistent with the evidence provided the Board of Appeals and subject to the conditions suggested by the County staff, namely:

1. The Applicant shall make applications to, and follow all of the rules, procedures, and construction timelines as outlined by the Office of Permits and Inspections regarding new construction.
2. The Applicant shall commence construction on the proposed improvements within eighteen months from the date of this decision.

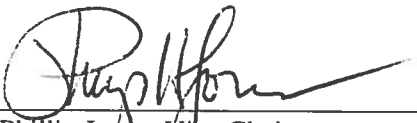
3. The Applicant shall plant natural vegetation at a ratio of one-to-one to the area of the proposed disturbance in conformance with an approved Critical Area Forest Preservation Plan. Tree removal requires mitigation consistent with COMAR 27.01.09.01-2H. The Applicant may obtain a Critical Area Forest Preservation Plan application through the Talbot County Department of Planning and Zoning.

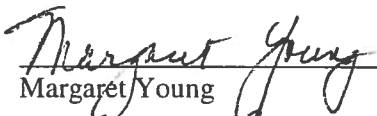
The vote of the Board was five to zero to grant the variance.

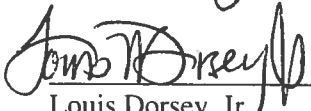
GIVEN OVER OUR HANDS, this 19th day of September, 2016.

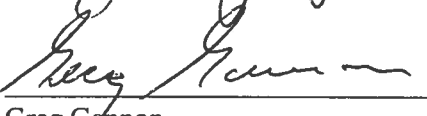
**TALBOT COUNTY BOARD OF APPEALS**

  
Paul Shortall, Jr., Chairman

  
Phillip Jones, Vice Chairman

  
Margaret Young

  
Louis Dorsey, Jr.

  
Greg Gannon

